

## **REMARKS**

The title has been amended as required by the Examiner. Turning to the rejection to the drawings under 37 CFR 1.83(a), the Examiner objects to the drawings because they fail to show plastic (in cross sectional views) as described in the specification. Figures 4, 6, 11 and 12 are described in the figure descriptions on page 5 as "sectional" views. Figures 3, 6, 11 and 12 are sectional views. The figure descriptions on page 5 of figures 3 and 4 are the wrong way round, as it is clear that the description for figure 3 on page 5 relates to figure 4 and vice versa. The specification has accordingly been amended, and it is believed that the objection to the drawings now is rendered moot.

The art rejections are respectfully traversed.

Considering first the rejection of claims 1-4 as anticipated by Merry, Applicant submits that Merry did not disclose an actuator for opening and closing the passageway as required by Claim 1 of the present invention. The Examiner has equated part 48 of Merry with the actuator (3') of the present invention. However, feature 48 is a removable separator tab which functions to isolate the anode and cathode in the device of Merry. This is discussed in Merry at column 1, lines 54 to 59, and column 2, lines 47 to 51. In contrast, the actuator of present invention (labeled 3' in the drawings) functions to deploy the sealing rings into sealing engagement with the neck of the bottle and opens up the passageway to the oxygen scavenging medium. The actuator 3' therefore performs two functions as discussed in the description on page 11 at lines 5 to 13. When the stopper is in place in a bottle and the external actuator 3' is depressed by a user, the actuator 3' causes entry port 40 to open (see page 10, line 29 to page 11, line 3 of the present application). This invention therefore has the advantage that the oxygen-scavenging

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medium is only exposed to the atmosphere within the bottle when the bottle stopper is in place and, thus, only exposed to the atmosphere within the bottle (see page 11, lines 10 to 13).

This is in complete contrast to the function of the removable separator tab 48 of Merry which functions solely to interrupt the electrical path created between cathode can 34 and anode can 36 in the packaging and before use. Actuator tab 48 is removed when the stopper of Merry is removed from its packaging. This ensures that the metal-air primary cell incorporated into the stopper of Merry is only activated once the stopper is removed from its packaging. The removable separator tab 48 of Merry is not operable to close or open a passageway using a closure, as recited by claim 1. In fact, the passageway 16 in Merry does not have any closure means to close a passageway between the oxygen consuming metal-air primary cell and the interior of the bottle, as the separator tab 48 does not block the metal-air primary cell from the atmosphere within the bottle; the separator tab 48 merely functions to interrupt the electrical path created between cathode can 34 and anode can 36 in the packaging and before use.

Applicant therefore respectfully submits that claim 1 is novel and inventive over the disclosure of Merry.

Claims 2, 3 and 4 are directly or indirectly dependent on claim 1, and are allowable for the same reasons above adduced relative to claim 1 as well as for their own additional limitations.

Turning to rejection of claim 21 as anticipated by Merry, as explained above, Merry discloses a bottle stopper having a chamber containing an oxygen consuming metal-air primary cell and which has a gap between the lid and body of the stopper through which a tab extends for controlling initiation of the electrolytic reaction. Claim 21 recites a bottle stopper having a chamber that is externally accessible by a portion of the stopper that is readily demountable by

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the user through removal of a screw-threaded or push/snap-fit cap. In contrast, the lid part 8 of the stopper or Merry is not adapted for engagement in a screw threaded or push-fit manner, therefore Merry does not disclose or teach the invention of claim 21. Merry discloses that the lid 8 is heat sealed in place or otherwise attached (see column 2, lines 12-13), however there is absolutely no disclosure in Merry that the lid part 8 should be readily demountable in a screw threaded or push-fit manner for access by the user. Therefore claim 21 also is novel and inventive in light of the prior art.

Turning to the rejection of claims 5-11 as obvious from Merry in view of Balderson, claims 5-11 are directly or indirectly dependent on claim 1. The deficiencies of Merry vis-à-vis claim 1 are discussed above. It is not seen that Balderson supplies the missing teachings to Merry to achieve or render obvious claim 1 or any of claims 5-11 which depend thereon. Nowhere in Balderson (US-5,617,812) is an actuator for operating a closure that opens and closes the passageway to oxygen-scavenging medium disclosed or suggested. Therefore, no combination of Merry and Balderson reasonably could be said to achieve or render obvious claim 1 or claims 5-11 which depend thereon.

Turning finally to the rejection of claims 13-20 as obvious from Merry in view of Balderson, claims 13-20 depend directly or indirectly on claim 13. The Examiner contends that features 30 and 52 of Merry are an oxygen-scavenging medium. However, as is disclosed in Merry, features 30 and 52 are hydrophilic layers. It is disclosed that hydrophilic layer 30 absorbs moisture from the hydrophobic layer 25 and also leakage from the metal-air cell. This is discussed at column 2, lines 31 to 36. Hydrophilic layer 52 is described as a second hydrophilic layer used between the lid and anode can which acts primarily as a resilient element positioned to maintain the oxygen removing assembly in position within the upper

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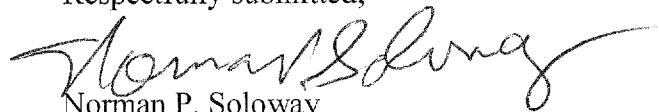
portion. The hydrophilic layers 30 and 52 are therefore not an oxygen-scavenging medium. The product preserving stopper of Merry functions in an entirely different way to that of the present invention. The stopper of Merry uses a metal-air primary cell to produce zinc oxide in an electrolysis reaction whilst consuming oxygen. This is in contrast to the present invention in which an oxygen-scavenging medium or oxygen absorber such as a block, tablet or sheet of an oxygen-scavenging compound is used. Balderson does not supply the missing teachings. Balderson relates to a tamper-evident system for indicating when a closed enclosure has been opened. It is not concerned with preventing spoilage by oxidation and is simply concerned with demonstrating that a container has been opened. The invention is not suitable for re-sealing bottles for storage.

Accordingly, no combination of Merry and Balderson reasonably could be said to achieve or render obvious claim 13, or claims 14-20 which depend or indirectly thereon.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action are respectfully requested.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,

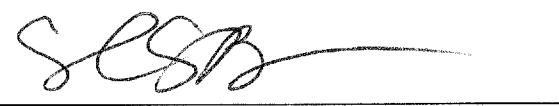
  
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